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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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9 United States of America, ) 13-6041M  
10 Plaintiff, ) **ORDER**  
11 vs. )  
12 )  
13 Ruben Morales-Reyes, )  
14 Defendant. )  
15

16 This Court has considered the parties' Joint Motion to Extend Time for Indictment.  
17 (Doc. 6)

18 Defendant has been charged by complaint with Illegal Entry, in violation of 8  
19 U.S.C. § 1325(a)(2) which carries a maximum prison sentence upon conviction of six  
20 months. Illegal Entry is a petty offense and a Class B misdemeanor. 18 U.S.C. §§ 3559(a)(7),  
21 19; *United States v. Garcia-Martinez*, 2009 WL 4438623, at \*3 (D. Ariz. Nov. 30, 2009).

22 The indictment clause of the Fifth Amendment provides that "[n]o person shall be  
23 held to answer for a capital, or otherwise infamous crime, unless on a presentment or  
24 indictment of a Grand Jury . . . ." Generally, however, a defendant charged with a petty  
25 offense has no constitutional right to proceed by indictment. *United States v. Ramirez*, 556  
26 F.2d 909, 911 (9th Cir. 1976) (citing *Duke v. United States*, 301 U.S. 492 (1937)); *see also*  
27 Federal Criminal Rules 7(a)(1)(B) ("An offense (other than criminal contempt) must be  
28 prosecuted by an indictment if it is punishable . . . by imprisonment for more than one

1 year.”), and Rule 58(b)(1) (“The trial of a misdemeanor may proceed on an indictment,  
2 information, or complaint. The trial of a petty offense may also proceed on a citation or  
3 violation notice.”).

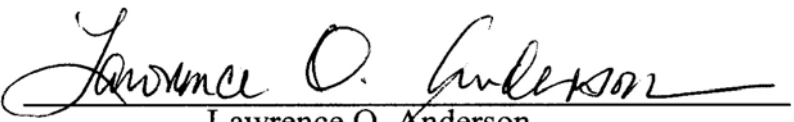
4 The Speedy Trial Act, 18 U.S.C. §§ 3161-3172, does not apply to petty offenses. *See*  
5 18 U.S.C. § 3172(a) (defining “offense” to be “any Federal criminal offense which is  
6 established by Act of Congress (other than a Class B or C misdemeanor or an infraction . .  
7 . . .”). “Petty offenses are exempted from both the requirement of a jury trial and the Speedy  
8 Trial Act.” *United States v. Richmond*, 312 Fed. Appx. 56, at \*1 (9th Cir. 2009) (citing  
9 *United States v. Baker*, 641 F.2d 1311, 1319 (9th Cir. 1981)) (holding Speedy Trial Act does  
10 not apply to petty offenses); *United States v. Carpenter*, 91 F.3d 1282 (9th Cir. 1996)  
11 (collecting cases explaining that criminal contempt cannot be classified as either a felony or  
12 misdemeanor for all purposes, but instead should be classified based on the sentencing range  
13 imposed).

14 Based on the foregoing,

15 **IT IS ORDERED** that the parties’ Joint Motion to Extend Time for Indictment, doc.  
16 6, is **DENIED** as moot.

17 DATED this 11<sup>th</sup> day of March, 2013.

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Lawrence O. Anderson  
United States Magistrate Judge